

Graphic Communication International Union, Local 508M, O-K-I, AFL-CIO and S. Rosenthal & Company, Inc. and Truck Drivers, Chauffeurs and Helpers, Local Union No. 100, an affiliate of the International Brotherhood of Teamsters, AFL-CIO. Case 9-CD-484

December 30, 1999

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN
AND BRAME

The charge in this Section 10(k) proceeding was filed June 2, 1999, by S. Rosenthal & Company, Inc., the Employer, alleging that Graphic Communications International Union, Local 508M, O-K-I, AFL-CIO (GCIU), violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees it represents rather than to employees represented by Truck Drivers, Chauffeurs and Helpers, Local Union No. 100, an affiliate of the International Brotherhood of Teamsters, AFL-CIO (Teamsters). The hearing was held June 23, 1999, before Hearing Officer Ann Marie Behrle.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The parties stipulated, and we find, that the Employer, an Ohio corporation, is engaged in the business of printing catalogs and magazines and annually ships goods valued in excess of \$50,000 from its facility located at Cincinnati, Ohio, to customers located outside the State of Ohio. The parties also stipulated, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that GCIU and Teamsters are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. Background and Facts of the Dispute

The Employer prints catalogs and magazines at its facility located in Cincinnati, Ohio, where it has collective-bargaining agreements with both GCIU and Teamsters. GCIU represents the pressmen, who do all the printing on the Web presses and the sheet-fed presses, and who also do all the preparatory work to make the plates and assemble the film for the presses. Teamsters represents the material handlers, who handle and transport paper and other materials throughout the facility. Each Union's employees work all three shifts at the Employer's facility. The pressmen work in either the Web pressroom or the sheet-fed pressroom. The material handlers work

in the front dock loading trucks; in the back dock area unloading box cars; in the roll room stocking and inventorying all the paper rolls; in the baler room baling clippings from the bindery and scrap material; and in the maintenance room. The material handlers go into the Web pressroom several times throughout their shifts to place on the floor all the paper rolls that are to be run on the presses, and to remove scrap such as the wrappers that came off the outside of the rolls, the white waste that was torn off the roll when the roll was prepped, and the butt rolls that had already been stripped.

The 12 assistant pressmen load the paper rolls onto the printing presses. They first remove the outer brown wrapper around the paper roll and put that into a container that holds the brown paper waste. They may strip off a small amount of the outside white paper if it has any deformities or nicks. Then they weigh that white paper waste on scales which were installed at printing presses in December 1998 or January 1999. Afterward, they place the white paper waste in a separate container from the brown paper. Once the paper roll nears completion going through the press, the assistant pressman stops it so there is a 3/4- to 1-inch thickness of paper left on the roll, as that part of the roll is not suitable for quality printing.

In the 1970s, the remaining paper on the butt rolls was removed either by the pressmen manually spinning the white paper off the roll and throwing it into a container (which a material handler later pulled out of the pressroom in order to dispose of the waste paper), or by the material handlers collecting the butt rolls from the pressroom and taking them to a machine located in the roll room known as the core slicer (a pneumatic-controlled guillotine slicer) that would slice through the remaining white paper. No one working for the Employer would record the weight of the white waste paper; rather, an outside recycling contractor would do that and would tell the Employer what it weighed after loading it onto his truck.

Starting in the mid-1980s, the Employer stopped using the core slicer to separate the white waste paper from the butt roll core, and simply shipped the intact butt rolls out to a recycling contractor. In 1998, the Employer hired a consulting firm, which recommended identifying the white paper waste with the particular jobs being run for cost accounting purposes, and having the white waste paper separated and weighed in-house rather than shipping it to outside contractors. In order to perform this work in-house, the Employer purchased the core stripper machines in late 1998 or early January 1999.

The core stripper machines are located next to the printing presses. The butt roll is placed on the core stripper machine and the machine automatically unwinds the paper off the end of the core. The Employer assigned the task of operating the core stripper machines to the assistant pressmen, who take the butt roll from the press ma-

chine and place it on the core stripper; once the paper is unwound, the pressman slides the roll out of the core stripper and takes the shaft and places the next roll of paper on it. While the core stripper is unwinding the paper, the pressman can perform other duties, such as preparing his next roll of paper. Once the paper is unwound on the core stripper, the pressman removes the white waste paper from the stripper, puts it on the adjacent scale and records the weight of the waste paper, and then puts the waste paper into a waste bin.¹ For each printing job, the pressman enters the weight of the butt roll white waste paper on a form, on which he has also entered the roll number, the beginning weight of the roll, the weight of the initial white paper waste, and his initials.

On January 20, 1999, Teamsters filed a grievance protesting the Employer's assignment of the work of stripping the waste paper off the butt rolls to employees represented by GCIU. Teamsters requested that such practice be stopped and the work be assigned to employees it represented. In response to this grievance, John Agnabroad, GCIU's executive vice president, notified the Employer by letter dated May 18, 1999, that GCIU did not intend to relinquish the work described by the grievance and would take whatever action was necessary to preserve its jurisdiction, including a strike.

B. Work in Dispute

The disputed work consists of the assignment of the operation of core stripper machines, inserting the butt rolls into the core stripper machines and stripping the waste paper from the cores.

C. Contentions of the Parties

The parties waived the filing of briefs. The Employer contends that the disputed work should be awarded to the pressmen represented by GCIU based on its collective-bargaining agreement with GCIU, economy and efficiency of operations, industry practice, and employer preference. GCIU agrees with the Employer that the work should be awarded to the pressmen. GCIU contends that the work in dispute is an auxiliary function of the pressroom, and that it has exclusive jurisdiction over such work in accord with its collective-bargaining agreement with the Employer.

Teamsters contends that the disputed work should be awarded to the material handlers it represents, based on its collective-bargaining agreement with the Employer and on the Employer's past practice, and consistent with the material handlers' classification.

D. Applicability of the Statute

Before the Board may proceed with a determination of a dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that

Section 8(b)(4)(D) has been violated and that the parties have not agreed on a method for the voluntary adjustment of the dispute.

It is undisputed that in response to information that Teamsters had filed a grievance protesting the assignment of the work in dispute to the pressmen, GCIU notified the Employer by letter dated May 18, 1999, that it would take whatever action necessary to preserve its jurisdiction, including a strike. We find that this threat is sufficient to establish reasonable cause to believe that Section 8(b)(4)(D) has been violated. The parties stipulated that there exists no agreed-on method for voluntary adjustment of the dispute which would be binding on all the parties within the meaning of Section 10(k) of the Act. Accordingly, we find that the dispute is properly before the Board for determination.

E. Merits of the Dispute

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J.A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of this dispute.

1. Certifications and collective-bargaining agreements

The parties stipulated that neither Union is the certified bargaining representative of a unit of the Employer's employees. The Employer has collective-bargaining agreements with both GCIU and Teamsters, and each Union claims that its most recent contract covers the work in dispute.

The work jurisdiction of GCIU is set forth in article 3 of its 1995–1999 collective-bargaining agreement with the Employer. Article 3 provides in relevant part:

[J]urisdiction of this contract extends over all printing presses operated in said pressrooms and all production equipment used in the pre-press department. All production work traditionally performed by these departments shall be the jurisdiction of the Union, regardless of the means, methods, or equipment used in the production process, including but not limited to, all production work in connection with the capturing and reproducing images, manipulation of images, proofing, plate making, and press operation.

The work jurisdiction of Teamsters is set forth at article 2 of its 1995–1999 collective-bargaining agreement with the Employer. Article 2 provides in relevant part:

The jurisdiction of the Union shall include the work performed by the employees on classifications listed in

¹ A material handler enters the pressroom several times during each shift in order to take out the waste bins.

Article 8 (Wages) of this Agreement, including material handling, paper bailing, electrical work, dock receiving, clerical work, roll stockkeeping, forklift work, roll truck work, all loading of boxcars, and truck and paper compactors.

Article 11 of the same agreement provides that “[T]he Company shall maintain all prevailing working conditions, benefits and past practices at the highest level existing at the effective date of this Agreement.”

The Board will rely on contract provisions if the assignment of the work is made in clear and unambiguous terms in those provisions. *Teamsters Local 470 (Philco-Ford Corp.)*, 203 NLRB 592, 594 (1973). That is not the case with the provisions relied on by either GCIU or Teamsters. Neither article 3 of the GCIU contract nor article 2 of the Teamsters contract expressly refers to the work in dispute in this proceeding. Article 2 of the Teamsters contract describes jurisdiction in terms of job functions and job classifications. The listed job functions do not expressly cover the work in dispute. In addition, Teamsters failed to produce any job descriptions which specifically identify the work in dispute among the listed duties for the material handlers or any other classifications represented by it. Furthermore, article 11 of the Teamsters contract regarding prevailing working conditions and past practices does not clearly and unambiguously grant the Teamsters-represented employees jurisdiction over the work in dispute, because it refers to past practices “existing at the effective date of this Agreement,” which is November 25, 1995. The Employer had not performed the work in dispute since the mid-1980s, before resuming it in late 1998 or early 1999, and thus the disputed work does not appear to constitute a “past practice” as specified in article 11.

Accordingly, as neither collective-bargaining agreement clearly and unambiguously covers the work in dispute, and this factor does not favor an award of the work to either group of employees.

2. Employer preference and past practice

The record shows that since late December 1998 or early January 1999, when the Employer resumed performing the work in dispute, its preference and consistent practice has been to use pressmen represented by GCIU to perform the work in dispute. Thus, the factor of Employer preference favors an award of the work to employees represented by GCIU.

The record also shows that from the 1970s until the mid-1980s, material handlers represented by Teamsters were primarily responsible for collecting the butt rolls from the pressroom and taking them to the core slicer machine, which would slice through the remaining white paper on the butt roll.² Some of the butt roll cores were

made of metal and could not be put into the core slicer, and for those the material handlers would remove the white waste paper by hand. The material handlers would then place the white waste paper into a container without weighing it. Teamsters argue that when the Employer resumed performing the work of removing the white waste paper off the butt rolls, it should have assigned this work to the material handlers that it represents because they performed similar work, using the core slicer, before the Employer switched to the outside recycling contractor.

We reject this argument because of various changes made by the Employer when it resumed performing the work of removing the white waste paper off the butt rolls in-house in late December 1998 or early January 1999. Specifically, the Employer no longer uses the core slicer to perform this work, but instead now uses the core stripper machines to perform the work. The core slicer was a pneumatic-controlled guillotine slicer that would come down and slice through the remaining white paper on the butt roll, and a material handler would then pull the paper off the roll. In contrast, with the core stripper machine, an employee slides the butt roll onto a cantilever, starts a piece of paper down on the bottom roller, flicks a switch which turns on a driver with a small motor, and then the machine automatically unwinds the paper off the core. In addition, the core slicer machines were located in the roll room, whereas the core stripper machines are located in the pressrooms adjacent to the printing presses. The Employer has also added another task to this job. The pressman now weighs the white paper butt roll waste on a scale attached to the printing press, and records that weight on a specific form (on which the pressman has also entered the roll number, the beginning weight of the roll, the weight of the initial white paper waste, and his initials). Before, the material handlers did not record the weight of the white paper butt roll waste. Thus, we find that the factor of past practice favors neither group of employees.

3. Economy and efficiency of operations

The Employer contends that it is more economical and efficient to assign the work in dispute to the pressmen represented by GCIU. According to the Employer, the pressmen are physically present in the pressroom where the core stripper machine is located and thus they can perform other tasks while waiting for this machine to finish unwinding the paper, and the pressmen can more easily track and weigh the amount of white waste being generated by each roll of paper, and record that information (as well as the roll number, the beginning weight of the roll, the weight of the initial white paper waste, and the pressman’s initials) on the required forms maintained at the presses. The Employer’s supporting evidence shows that no additional staffing was required when it assigned the disputed work to the pressmen. The Em-

² During this time, it was also not uncommon for the pressmen manually to unwind the remaining paper off the butt roll.

ployer also presented testimony from James Brown, the Employer's vice president and general manager, and Gerald MacDonald, the Employer's plant manager, that if the work in dispute were assigned to the material handlers represented by Teamsters, it would be necessary to have one or two of those employees just standing around the pressroom, contrary to current practice, to be present to operate the core strippers and to weigh and record the generated white waste, or the Employer would have to summon them from another area of the plant and wait until they arrived before proceeding with the production process. Brown also testified that having to hire one or two additional material handlers would probably cause the Employer to reevaluate its current system of handling the white paper waste.

Teamsters argue that it is just as efficient and economical to use the material handlers to perform the disputed work. Steve Mills, who currently works as a material handler for the Employer, testified that the material handlers responsible for removing the waste bins containing the paper waste from the pressroom spend approximately 1-1/2 hours per shift in the pressroom. Mills testified that he thought the material handlers could perform the disputed work and track what job and what press a butt roll came from if the rolls for each job were segregated in their own boxes. Mills also suggested that if there was a way to identify the roll number on the butt roll, this would enable the material handlers to remove the butt rolls from the pressroom and still track the roll number for each roll. Mills further explained that even under the present system, he sometimes sees three or four butt rolls allowed to accumulate before the pressmen place them on the core stripper machines. Mills indicated that the fairly lightweight core strippers are portable and need not be physically attached to the presses, but could be moved to a more accessible location for the material handlers.

The Employer's above evidence reveals the following advantages in having the pressmen perform the work in dispute: they are physically present where the core stripper machines are located, they can perform other duties while the core stripper machine unwinds the paper, and they can easily track and record the weight of white waste paper being generated with each print job. Because the core stripper machines require only intermittent attention, it would be more disruptive to the Employer's operations for a material handler to interrupt his duties outside the pressroom to come in and oversee the machine than for the pressmen working nearby to attend to it. Also, the hiring of additional workers would probably be needed if the material handlers performed the work. While Mills testified for Teamsters that he thought the material handlers could perform the work as efficiently as the pressmen, his suggestions for enabling the material handlers to perform the work appear to create extra steps for the Employer in performing the work.

Mills offered these alternatives—segregating the rolls in separate boxes and identifying roll numbers on the butt rolls—that create additional work and run the added risk of possible confusion if a roll were not properly segregated or marked. Thus, based on the above evidence, we find that the factor of economy and efficiency of operations favors an award of the work to employees represented by GCIU.

4. Area and industry practice

The Employer concedes that it is not aware of any local printing companies that use core stripper machines. However, it asserts that several national companies perform similar work with the core stripper machines. Based on hearsay information, the Employer believes that the pressmen perform the work at those national companies that are unionized. The Employer, however, does not know if those companies have material handlers or if they have material handlers that are represented by Teamsters or another union. Therefore, there is no indication that two groups of employees, like the instant situation, have claimed or competed for the same kind of work. Thus, there is no evidence of either area or industry practice on this record. Accordingly, we find that this factor does not favor an award to either group of employees.

5. Relative skills

The Employer contends that employees represented by both Unions possess the necessary skills to perform the work in dispute, as it requires no special skills. Teamsters asserts that no special skills are needed to perform the disputed work and that either the pressmen or the material handlers could do the job. Because there is no evidence that specialized skills are needed to perform the disputed work, this factor does not favor an award to either group of employees.

Conclusion

After considering all the relevant factors, we conclude that the employees represented by GCIU are entitled to perform the work in dispute. We reach this conclusion relying on the factors of employer preference and economy and efficiency of operations. In making this determination, we are awarding the work to employees represented by GCIU, not to that Union or its members. The present determination is limited to the particular controversy that gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

Employees of S. Rosenthal & Company, Inc., represented by Graphic Communications International Union, Local 508M, O-K-I, AFL-CIO, are entitled to perform the work of operating the core stripper machines, insert-

ing the butt rolls into the core stripper machines and stripping the waste paper from the cores, at its Cincinnati, Ohio facility.